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**Senate Committee on Seniors and Human Services
April 22, 2015
HB 4188, 4189 & 4190**

Honorable Chairwoman Emmons and committee members,

My name is Jay Kaplan and I am the staff attorney for the ACLU of Michigan's LGBT Project. I am here on behalf of the ACLU of Michigan to oppose House Bills 4188, 4189, and 4190 which will allow foster and adoption agencies in this state to place their own religious beliefs above the welfare and best interests of the children that have been placed in their care by the state. Moreover, it allows these agencies to do so with public money.

In previous committee testimony both Catholic Social Services and Bethany Christian (which collectively place about 60% of state-funded foster children) specifically stated that they would not accept LGBT families and unmarried parents. The state farms out all adoption services, but the discrimination allowed by this policy would taint the adoption process as well because many of the foster families become adoptive families.

This might be remedial, but it is important to explain how to the public how the system works. We start with the language in the main bill (HB 4188), page 3 at lines 9-11: (B) "SERVICES" INCLUDES ANY SERVICE THAT A CHILD PLACING AGENCY PROVIDES, EXCEPT FOSTER CARE CASE MANAGEMENT AND ADOPTION SERVICES PROVIDED UNDER A CONTRACT WITH THE DEPARTMENT.

The definition of "services" would appear to exempt from allowable discrimination any state contracted placement. However in reality, In Michigan, foster and adoption agencies fill the role of finding and vetting families who are willing to foster and adopt. The state also serves this function, but in a limited role. If you go on the state website to sign up for foster care placement, the state directs you to a list of child placing agencies who will decide whether you are fit and whether they will represent you as a foster/adoptive family. As children come up for placement, the state (somewhat randomly) places the child with one of the agencies on its list. Once you are with an agency, you generally stay with that agency through the entire placement period and as the adoptive family, if that comes to fruition. As I mentioned above, the two agencies that receive the largest share of placements are the agencies that are pushing this legislation.

The problem obviously exists in that the child placing agencies select the pool of families, so the "discrimination" takes place well before a child is assigned to the agency, making the exception in the definition of "services" specious (but it makes some of the legislators feel good). So although the bills allow a child placing agency to refuse a child placement because it offends their religious tenants, the basis for discrimination lies not with the child but with the selection of families the agency chooses to serve, and for which they are paid millions of dollars in taxpayer funds. And to make matters worse, a family looking to become foster or adoptive parents would have no clue as to which agency chooses to discriminate. We have several LGBT families who were on waiting lists for years because they were not aware that the agency was refusing to place a child with them due to religious objections, which they did not make known to the potential foster family. At any given time, there are 3,000 kids awaiting placement in Michigan. There is no room for discrimination.

Aside from the 1st Amendment problem of violating separation of church and state, the legal argument against this legislation is that Michigan law and courts require that the best interests of the child be paramount when placing a child. They look at 12 factors under that rubric. In the past, this legislation ultimately failed based on the fact that asserting a religious or moral objection undermines state law. ("[T]he concept of the best interests of the child has long been the polar star for judicial guidance in cases involving children. *Corrie v Corrie*, 42 Mich 509, (1880); *In re Ernst*, 373 Mich 337 (1964).").

However, this particular legislation seeks to eliminate the consideration of "best interest of the child" when an agency asserts a religious or moral objection: HB 4188, page 3 at lines 23-26: (3) IF A CHILD PLACING AGENCY DECLINES A REFERRAL UNDER SUBSECTION (1), THAT OCCURRENCE SHALL NOT BE A FACTOR IN DETERMINING WHETHER A PLACEMENT IN CONNECTION WITH THE REFERRAL IS IN THE BEST INTEREST OF THE CHILD. We don't believe the addition of this sentence changes the duty of the state to consider the best interest of the child, first and foremost.

In sum, just as the state cannot refuse to contract with a private faith based agency for child placements simply because of the agency's religious affiliation, an agency that uses state money to place children in state custody, and as such acts as the state for that purpose, cannot refuse to work with a prospective parent simply because of the parents' religious affiliation. This is unconstitutional, but this is exactly what these bills allow agencies to do. For that reason, we strongly oppose House Bills 4188, 4189 and 4190 and stand ready should they become law.